

111TH CONGRESS
1ST SESSION

S. 1743

To amend the Internal Revenue Code of 1986 to expand the rehabilitation credit, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2009

Mrs. LINCOLN (for herself and Ms. SNOWE) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to expand
the rehabilitation credit, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INCREASE IN THE REHABILITATION CREDIT**

4 **FOR CERTAIN SMALLER PROJECTS.**

5 (a) IN GENERAL.—Section 47 of the Internal Rev-
6 enue Code of 1986 (relating to rehabilitation credit) is
7 amended by adding at the end the following new sub-
8 section:

9 “(e) SPECIAL RULE REGARDING CERTAIN SMALLER
10 PROJECTS.—

1 “(1) IN GENERAL.—In the case of any qualified
2 rehabilitated building or portion thereof—

3 “(A) which is placed in service after the
4 date of the enactment of this subsection, and

5 “(B) which is a smaller project,
6 subsection (a)(2) shall be applied by substituting ‘30
7 percent’ for ‘20 percent’.

8 “(2) MAXIMUM CREDIT.—The credit deter-
9 mined under this subsection with respect to any
10 smaller project for all taxable years shall not exceed
11 \$1,500,000.

12 “(3) SMALLER PROJECT DEFINED.—

13 “(A) IN GENERAL.—For purposes of this
14 subsection, the term ‘smaller project’ means
15 any qualified rehabilitated building or portion
16 thereof if—

17 “(i) the qualified rehabilitation ex-
18 penditures taken into account for purposes
19 of this section (or would have been so
20 taken into account if this subsection had
21 been in effect for all prior periods) with re-
22 spect to the rehabilitation are not over
23 \$7,500,000, and

1 “(ii) no credit was allowed under this
 2 section for either of the 2 prior taxable
 3 years with respect to such building.

4 “(B) SPECIAL RULES.—

5 “(i) ENERGY EFFICIENCY EXPENDI-
 6 TURES NOT TAKEN INTO ACCOUNT.—
 7 Amounts that are qualified rehabilitation
 8 expenditures solely by reason of subsection
 9 (c)(2)(E) shall not be taken into account
 10 under subparagraph (A)(i).

11 “(ii) PROGRESS EXPENDITURES.—
 12 Credit allowable by reason of subsection
 13 (d) shall not be taken into account under
 14 subparagraph (A)(ii).”.

15 (b) EFFECTIVE DATE.—The amendment made by
 16 this section shall apply to periods after the date of the
 17 enactment of this Act, under rules similar to the rules of
 18 section 48(m) of the Internal Revenue Code of 1986 (as
 19 in effect on the day before the date of the enactment of
 20 the Revenue Reconciliation Act of 1990).

21 **SEC. 2. USE FOR LODGING NOT TO DISQUALIFY FOR REHA-**
 22 **BILITATION CREDIT PROPERTY WHICH IS**
 23 **NOT A CERTIFIED HISTORIC STRUCTURE.**

24 (a) IN GENERAL.—Subparagraph (C) of section
 25 50(b)(2) of the Internal Revenue Code of 1986 (relating

1 to property eligible for the investment credit) is amended
 2 by striking “certified historic structure” and inserting
 3 “qualified rehabilitated building”.

4 (b) EFFECTIVE DATE.—The amendment made by
 5 this section shall apply to property placed in service after
 6 the date of the enactment of this Act.

7 **SEC. 3. DATE BY WHICH BUILDING MUST BE FIRST PLACED**
 8 **IN SERVICE.**

9 (a) IN GENERAL.—Subparagraph (B) of section
 10 47(c)(1) of the Internal Revenue Code of 1986 (relating
 11 to the date by which building must be first placed in serv-
 12 ice) is amended—

13 (1) by striking “BUILDING MUST BE FIRST
 14 PLACED IN SERVICE BEFORE 1936” and inserting
 15 “DATE BY WHICH BUILDING MUST FIRST BE
 16 PLACED IN SERVICE”, and

17 (2) by striking “before 1936” at the end of the
 18 subparagraph and inserting “no less than 50 years
 19 prior to the year in which qualified rehabilitation ex-
 20 penditures are taken into account under subsection
 21 (b)(1)”.

22 (b) EFFECTIVE DATE.—The amendment made by
 23 this section shall apply to property placed in service after
 24 the date of the enactment of this Act.

1 **SEC. 4. MODIFICATIONS REGARDING CERTAIN TAX-EXEMPT**
 2 **USE PROPERTY.**

3 (a) IN GENERAL.—Clause (I) of section
 4 47(c)(2)(B)(v) of the Internal Revenue Code of 1986 (re-
 5 lating to tax-exempt use property) is amended by inserting
 6 “and subclauses (I), (II), and (III) of section
 7 168(h)(1)(B)(ii) shall not apply” after “thereof”.

8 (b) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to property placed in service after
 10 the date of the enactment of this Act.

11 **SEC. 5. REHABILITATION CREDIT MAY BE TRANSFERRED.**

12 (a) IN GENERAL.—Subsection (b) of section 47 of the
 13 Internal Revenue Code of 1986 (relating to when expendi-
 14 tures taken into account) is amended by adding at the
 15 end the following new paragraph:

16 “(3) CREDIT MAY BE ASSIGNED.—The amount
 17 of qualified rehabilitation expenditures, not to exceed
 18 \$5,000,000, which would (but for this paragraph) be
 19 taken into account under subsection (a) for any tax-
 20 able year by any person (hereafter in this paragraph
 21 referred to as the ‘initial taxpayer’)—

22 “(A) may be taken into account by any
 23 other person to whom such expenditures are as-
 24 signed by the initial taxpayer, and

25 “(B) shall not be taken to account by the
 26 initial taxpayer.

1 Any person to whom such expenditures are assigned
 2 under subparagraph (A) shall be treated for pur-
 3 poses of this title as the taxpayer with respect to
 4 such expenditures.”.

5 (b) CONFORMING AMENDMENT.—The heading for
 6 such subsection (b) is amended by inserting “; ELIGI-
 7 BILITY FOR CREDIT MAY BE ASSIGNED” after “AC-
 8 COUNT”.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply with respect to rehabilitations the
 11 physical work on which begins after the date of the enact-
 12 ment of this Act.

13 **SEC. 6. CREDIT FOR MODERATE REHABILITATIONS.**

14 (a) IN GENERAL.—Subclause (I) of section
 15 47(c)(1)(C)(i) of the Internal Revenue Code of 1986 (de-
 16 fining substantially rehabilitated) is amended by inserting
 17 “50 percent of” before “the adjusted basis”.

18 (b) EFFECTIVE DATE.—The amendment made by
 19 this section shall apply with respect to rehabilitations the
 20 physical work on which begins after the date of the enact-
 21 ment of this Act.

22 **SEC. 7. ADDITION OF ENERGY EFFICIENCY SUPPLEMENT**
 23 **TO REHABILITATION CREDIT.**

24 (a) IN GENERAL.—Subsection (a) of section 47 of the
 25 Internal Revenue Code of 1986 is amended by striking

1 “and” at the end of paragraph (1), by striking the period
 2 at the end of paragraph (2) and inserting “, and”, and
 3 by adding at the end the following new paragraph:

4 “(3) in the case of a qualified rehabilitated
 5 building designed to achieve at least a 30 percent
 6 qualified energy use reduction as a result of being
 7 substantially rehabilitated (determined under sub-
 8 section (e)), the energy efficiency supplement with
 9 respect to such building.”.

10 (b) ENERGY EFFICIENCY SUPPLEMENT.—Section 47
 11 of such Code is amended by adding at the end the fol-
 12 lowing new subsection:

13 “(e) ENERGY EFFICIENCY SUPPLEMENT.—

14 “(1) IN GENERAL.—For purposes of subsection
 15 (a)(3), the energy efficiency supplement shall be de-
 16 termined in accordance with the following table.

“If the achieved qualified energy use reduc- tion is—	The energy effi- ciency supple- ment per square foot of the building is—
At least 30 percent but not over 35 percent	\$2.00
Over 35 percent but not over 40 percent	\$2.67
Over 40 percent but not over 45 percent	\$3.42
Over 45 percent but not over 50 percent	\$4.18
Over 50 percent	\$5.00.

17 “(2) LIMITATION.—In no event shall the energy
 18 efficiency supplement exceed 50 percent of the quali-
 19 fied rehabilitation expenditures with respect to the
 20 qualified rehabilitated building.

1 “(3) PARTIAL ALLOWANCE.—

2 “(A) IN GENERAL.—In order to encourage
3 implementation of building retrofits, the Sec-
4 retary shall prescribe by regulations the condi-
5 tions under which a taxpayer may receive a par-
6 tial energy efficiency supplement corresponding
7 to the actual qualified energy use reduction
8 achieved.

9 “(B) TAXPAYER ELIGIBILITY.—This para-
10 graph shall apply to a taxpayer only if—

11 “(i) the taxpayer certifies to the Sec-
12 retary that the rehabilitation was under-
13 taken as part of a plan to achieve a quali-
14 fied energy use reduction of at least 30
15 percent, and

16 “(ii) such reduction is not substan-
17 tiated under any certification process pre-
18 scribed by the Secretary, but a qualified
19 energy use reduction of at least 25 percent
20 is so substantiated.

21 “(C) MAXIMUM PARTIAL ALLOWANCE.—
22 The energy efficiency supplement allowable by
23 reason of this paragraph shall not exceed the
24 product of—

25 “(i) \$2.00, and

1 “(ii) a fraction—

2 “(I) the numerator of which is
3 the number of percentage points of
4 the achieved qualified energy use re-
5 duction, and

6 “(II) the denominator of which is
7 30.

8 “(4) QUALIFIED ENERGY USE REDUCTION.—

9 For purposes of this subsection, the term ‘qualified
10 energy use reduction’ means, for buildings or aggre-
11 gation of buildings, improvement in energy perform-
12 ance with reference to the energy consumption dur-
13 ing the previous year of the building or aggregation
14 of buildings being rehabilitated, while adjusting for
15 other relevant factors including prior vacancy, intro-
16 duction of modern technologies and systems, and
17 changes in use and occupancy loads.

18 “(5) REGULATIONS.—The Secretary, after con-
19 sultation with the Administrator of the Environ-
20 mental Protection Agency and the Secretary of the
21 Interior, shall promulgate such regulations as may
22 be necessary or appropriate to carry out the pur-
23 poses of the energy efficiency supplement, including
24 prescribing the manner and method for calculating,
25 verifying, and certifying qualified energy use reduc-

1 tions. Such regulations shall provide that a qualified
 2 energy use reduction shall be determined by using
 3 an established energy benchmarking tool which shall,
 4 to the maximum extent feasible, take into account
 5 the requirements necessary to become a certified re-
 6 habilitation and shall include an approach that de-
 7 termines success in energy efficiency based on actual
 8 measured savings after a retrofit is complete.

9 “(6) COORDINATION.—The Secretary shall des-
 10 ignate processes for tracking the numbers and loca-
 11 tions of buildings claiming the energy efficiency sup-
 12 plement, with information on projected and actual
 13 savings of energy and its value over time in coordi-
 14 nation with the Department of Energy.”.

15 (c) SUBSTANTIAL REHABILITATION REQUIREMENT
 16 NOT TO APPLY TO ENERGY EFFICIENCY SUPPLEMENT.—
 17 Subparagraph (A) of section 47(c)(1) (defining qualified
 18 rehabilitated building) is amended by adding at the end
 19 the following new flush sentence:

20 “Clause (i) shall not apply to so much of the
 21 rehabilitation credit as is attributable to the en-
 22 ergy efficiency supplement under subsection
 23 (a)(3).”.

24 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), the amendments made by this section
 3 shall apply to property placed in service after the
 4 date of the enactment of this Act.

5 (2) WAIVER OF SUBSTANTIAL REHABILITATION
 6 REQUIREMENT.—The amendment made by sub-
 7 section (c) shall apply with respect to rehabilitations
 8 the physical work on which begins after the date of
 9 the enactment of this Act.

10 **SEC. 8. MODIFICATION TO DEFINITION OF QUALIFIED RE-**
 11 **HABILITATION EXPENDITURE.**

12 (a) IN GENERAL.—Clause (i) of section 47(c)(2)(A)
 13 of the Internal Revenue Code of 1986 (relating to the defi-
 14 nition of qualified rehabilitation expenditures) is amended
 15 by striking “or” at the end of subclause (III), by striking
 16 subclause (IV), and by inserting after subclause (III) the
 17 following new subclauses:

18 “(IV) rehabilitated building en-
 19 ergy efficiency property, or

20 “(V) an addition or improvement
 21 to property described in subclause (I),
 22 (II), (III), or (IV), and”.

23 (b) REHABILITATED BUILDING ENERGY EFFICIENCY
 24 PROPERTY.—Section 47(c)(2) of such Code is amended by
 25 adding at the end the following new subparagraph:

1 “(E) REHABILITATED BUILDING ENERGY
2 EFFICIENCY PROPERTY.—

3 “(i) IN GENERAL.—For purposes of
4 subparagraph (A), the term ‘rehabilitated
5 building energy efficiency property’ means
6 property which is certified as being—

7 “(I) affixed to, adjacent to, or in-
8 tegral to the provision of renewable
9 energy to a qualified rehabilitated
10 building, or

11 “(II) installed as part of a plan
12 designed to achieve any qualified en-
13 ergy use reduction (as defined in sub-
14 section (e)(4)) or a reduction in water
15 use.

16 Subparagraph (B)(i) shall not apply to re-
17 habilitated building energy efficiency prop-
18 erty.

19 “(ii) CERTIFICATION.—The Secretary
20 shall prescribe the manner and method for
21 the making of certifications under clause
22 (i).”.

23 (c) ENLARGEMENTS.—Clause (iii) of section
24 47(c)(2)(B) of such Code is amended by adding at the
25 end the following new sentence: “The preceding sentence

1 shall not apply to any rehabilitated building energy effi-
2 ciency property which is an addition or improvement to
3 a building.”

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to qualified rehabilitated buildings
6 placed in service after the date of the enactment of this
7 Act.

8 **SEC. 9. COORDINATION OF ENERGY CREDIT WITH REHA-**
9 **BILITATION CREDIT.**

10 (a) IN GENERAL.—Paragraph (2) of section 48(a) of
11 the Internal Revenue Code of 1986 is amended by striking
12 subparagraph (B).

13 (b) BASIS REDUCTION.—Paragraph (3) of section
14 50(c) of such Code is amended by adding at the end the
15 following new flush sentence:

16 “In the case of property that qualifies for both the
17 energy credit and the rehabilitation credit, the pre-
18 ceding sentence shall be applied by substituting
19 ‘none’ for ‘only 50 percent’ each place it appears.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to property placed in service after
22 the date of the enactment of this Act.

1 **SEC. 10. SPECIAL RULES FOR DISPOSITIONS OF STATE HIS-**
 2 **TORIC TAX CREDITS.**

3 (a) IN GENERAL.—Part III of subchapter B of chap-
 4 ter 1 of the Internal Revenue Code of 1986 (relating to
 5 items specifically excluded from gross income) is amended
 6 by inserting after section 139C the following new section:

7 **“SEC. 139D. DISPOSITIONS OF STATE HISTORIC TAX CRED-**
 8 **ITS.**

9 “(a) EXCLUSION FROM INCOME; BASIS REDUC-
 10 TION.—

11 “(1) IN GENERAL.—In the case of a taxpayer
 12 who receives a State historic tax credit and transfers
 13 or disposes of such credit, or receives a refund of all
 14 or a portion of such credit—

15 “(A) no portion of the net proceeds of such
 16 transfer or disposition or of such refund shall
 17 constitute income to such taxpayer under sec-
 18 tion 61(a), and

19 “(B) the taxpayer’s adjusted basis in the
 20 property with respect to which the State his-
 21 toric tax credit is allowed shall be reduced by
 22 an amount equal to such net proceeds or refund
 23 received by such taxpayer,
 24 unless the taxpayer makes an election under sub-
 25 section (b).

1 “(2) DETERMINATION OF REDUCTION IN
2 BASIS.—The reduction in basis under paragraph (1)
3 shall be applied—

4 “(A) first, against the basis in the land,

5 “(B) second, against so much of the basis
6 of any building or interest therein as was not
7 treated as a qualified rehabilitation expenditure
8 by reason of clause (ii) or (iii) of section
9 47(c)(2)(B), and

10 “(C) third, against the remaining basis in
11 the property.

12 “(D) ADJUSTMENT IN BASIS OF INTEREST
13 IN PARTNERSHIP OR S CORPORATION.—The ad-
14 justed basis of—

15 “(i) a partner’s interest in a partner-
16 ship, or

17 “(ii) stock in an S corporation (as de-
18 fined in section 1361(a)(1)),

19 shall be appropriately adjusted to take into ac-
20 count adjustments made under this subsection
21 in the basis of property held by the partnership
22 or S corporation (if any).

23 “(b) ELECTION TO INCLUDE IN INCOME.—

24 “(1) IN GENERAL.—In the case of a taxpayer
25 who elects to have this subsection apply, the net pro-

1 ceeds of the transfer or disposition or the refund de-
 2 scribed in subsection (a) received by such taxpayer
 3 shall constitute income to such taxpayer under sec-
 4 tion 61(a).

5 “(2) MAKING OF ELECTION.—An election under
 6 this subsection shall be made at such time and in
 7 such manner as the Secretary of the Treasury may
 8 by regulation prescribe. Such election shall apply for
 9 the taxable year for which it is made and for all sub-
 10 sequent taxable years and may be revoked only with
 11 the consent of the Secretary of the Treasury.

12 “(c) EFFECT ON QUALIFIED REHABILITATION EX-
 13 PENDITURES AND REHABILITATION CREDITS.—For pur-
 14 poses of determining the rehabilitation credit allowable to
 15 a taxpayer under section 47, the transfer or disposition
 16 of State historic tax credits with respect to any property
 17 by a taxpayer shall not affect or reduce the amount of
 18 qualified rehabilitation expenditures (as defined in section
 19 47(c)(2)) incurred in connection with such property, nor
 20 shall such transfer or disposition, nor any basis adjust-
 21 ments under subsection (a), be treated as an early disposi-
 22 tion of investment credit property for purposes of the re-
 23 capture provisions of section 50.

24 “(d) STATE HISTORIC TAX CREDITS DEFINED.—For
 25 purposes of this section, the term ‘State historic tax credit’

1 means any credit against State or local tax liabilities
 2 which—

3 “(1) is allowable under the laws of any State or
 4 political subdivision thereof to a taxpayer with re-
 5 spect to expenditures made for the rehabilitation of
 6 property identified by such laws, and

7 “(2) is transferable or refundable under such
 8 laws.”.

9 (b) CLERICAL AMENDMENT.—The table of sections
 10 for such part III is amended by inserting after the item
 11 relating to section 139C the following new item:

“Sec. 139D. Dispositions of state historic tax credits.”.

12 (c) EFFECTIVE DATE.—This section shall apply to
 13 transfers or dispositions made, or refunds received, after
 14 the date of the enactment of this Act.

○